

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 277

Introduced by Mello, 5; Cornett, 45; Giese, 17; Nantkes, 46;
Nordquist, 7.

Read first time January 14, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Criminal Code; to amend section
2 28-101, Reissue Revised Statutes of Nebraska; to provide
3 requirements, violations, and penalties for the purchase
4 of spray paint and industrial-strength marking pens by
5 a minor; to harmonize provisions; and to repeal the
6 original section.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-101 Sections 28-101 to 28-1350 and section 2 of this
4 act shall be known and may be cited as the Nebraska Criminal Code.

5 Sec. 2. (1) No person shall sell, give away, exchange,
6 deliver, or, except as provided in subdivision (2)(b) of
7 this section, permit the sale or gift of spray paint or any
8 industrial-strength marking pen to any minor. Any person violating
9 this subsection shall be guilty of a Class I misdemeanor.

10 (2)(a) No minor shall purchase, receive, or otherwise
11 acquire or attempt to purchase, receive, or otherwise acquire spray
12 paint or any industrial-strength marking pen by misrepresentation
13 of age. Any person violating this subdivision shall be guilty of a
14 Class III misdemeanor.

15 (b) It shall be lawful for a parent or guardian
16 eighteen years of age or older to procure spray paint or any
17 industrial-strength marking pen for his or her minor child.

18 (3) To establish proof of age for the purpose of
19 purchasing spray paint or any industrial-strength marking
20 pen, a person shall present or display a valid driver's or
21 operator's license, Nebraska state identification card, military
22 identification card, alien registration card, or passport.

23 (4) In any prosecution of or any proceeding against any
24 person charged with having made such sale to a minor, proof of the
25 following shall be an absolute defense to the charge:

1 (a) (i) The purchaser falsely represented in writing and
2 supported with other documentary proof that he or she was of legal
3 age to purchase spray paint or any industrial-strength marking pen;

4 (ii) The appearance of such purchaser was such that an
5 ordinary and prudent person would believe that such appearance
6 conformed to any documentary description of appearance presented by
7 the purchaser; and

8 (iii) The seller was acting in good faith, in reliance
9 upon the written representation, other documentary evidence, and
10 the appearance of the purchaser, and in the belief the purchaser
11 was of legal age to make such purchase; or

12 (b) The seller was acting with the knowledge of and in
13 cooperation with a duly authorized law enforcement officer.

14 Sec. 3. Original section 28-101, Reissue Revised Statutes
15 of Nebraska, is repealed.